

2 AAC 96.335. Denial of request

- (a) A request for a public record that complies with this chapter may be denied only if
- (1) the record is not known to exist after the public agency makes a diligent search for it;
 - (2) the record is not in the public agency's possession, and after a diligent search the public agency does not know where the record is to be found;
 - (3) the record has been destroyed in accordance with an applicable record-retention schedule;
 - (4) nondisclosure of the record is authorized by a federal law or regulation, or by state law; or
 - (5) the record is believed to be in the agency's possession but has not yet been located, in which case the public agency shall proceed under (f) of this section.
- (b) A request may be denied by the public agency head or by an agency employee to whom denial authority has been delegated by the public agency head.
- (c) An initial denial of a written request must be in writing; must state the reasons for the denial, including any specific legal grounds for the denial; and must be dated and signed by the person issuing the denial. If a request is denied by a public agency employee to whom denial authority has been delegated, the notice of denial must reflect this delegation. A copy of 2 AAC [96.335](#) - 2 AAC [96.350](#) must be enclosed with the denial.
- (d) A denial of a written request, in whole or in part, must state that
- (1) the requestor may administratively appeal the denial by complying with the procedures in 2 AAC [96.340](#);
 - (2) the requestor may obtain immediate judicial review of the denial by seeking an injunction from the superior court under [AS 40.25.125](#) ;
 - (3) an election not to pursue injunctive remedies in superior court shall have no adverse effects on the rights of the requestor before the public agency; and
 - (4) an administrative appeal from a denial of a request for public records requires no appeal bond.
- (e) A denial of a written request is considered to be issued at the time the denial is either delivered to the United States Postal Service for mailing, or hand-delivered to the requestor by an employee or agent of the public agency.
- (f) If a written request is denied because a record has not yet been located and the record is believed to exist in the agency's possession, the office in the public agency responsible for maintaining the record is believed to exist in the agency's possession, the office in the public agency responsible for maintaining the record shall continue to search until the record is located or until it appears that the record does not exist or is not in the public agency's possession. The public agency shall periodically inform the requestor of its progress in searching for the requested record.
- (g) A record that is the subject of a public records request that has been denied shall not be destroyed or transferred from the public agency's custody, except that records may be transferred to state archives and records management services as provided by [AS 40.21](#) and regulations adopted under AS 40.21. A public agency may not destroy or transfer custody of a record to which access has been denied or restricted until at least 60 working days after the requestor is notified in writing that the request has been denied, or if there is an administrative or judicial appeal or other legal action pending at the end of the 60-working-day period, until the requestor has exhausted those actions.

History: Eff. 11/6/94, Register 132

Authority: [AS 40.25.110](#); [AS 40.25.120](#); [AS 40.25.123](#); [AS 40.25.125](#)

2 AAC 96.340. Appeal from denial; manner of making

(a) A requestor whose written request for a public record has been denied, in whole or in part, may ask for reconsideration of the denial by submitting a written appeal to the agency head.

(b) An appeal under (a) of this section must be mailed or hand-delivered to the agency head within 60 working days after the denial is issued and must include the date of the denial and the name and address of the person issuing the denial. The appeal must also identify the records to which access was denied and which are the subject of the appeal. If an appeal is from the failure of the agency to respond to the records request within the appropriate time limit under 2 AAC [96.325](#), the appeal must so state, must identify the records sought, and must identify the public agency to which the request was directed and the date of the request.

(c) The 60 working days within which an appeal must be filed begins to run upon the issuance of the denial or, if no denial is issued, upon the expiration of the time period within which the public agency should have responded.

History: Eff. 11/6/94, Register 132

Authority: [AS 40.25.110](#); [AS 40.25.120](#); [AS 40.25.123](#); [AS 40.25.125](#)

2 AAC 96.345. Appeal determinations; time allowed; by whom made

(a) As soon as practicable, but not later than the 10th working day after the close of the record on appeal, the agency head shall issue a written determination stating which of the records that are the subject of the appeal will be disclosed and which records will not be disclosed. The written determination must comply with 2 AAC [96.350](#).

(b) The agency head may extend the 10-working-day period for a period not to exceed 30 working days upon written request from the requestor, or by sending a written notice to the requestor within the basic 10-working-day period.

(c) The agency head may delegate authority and duties under (a) and (b) of this section to a full-time employee of the public agency not involved in the denial and not subordinate to the employee responsible for the denial. The employee delegated this authority may not subdelegate to another employee.

History: Eff. 11/6/94, Register 132

Authority: [AS 40.25.110](#); [AS 40.25.120](#); [AS 40.25.123](#); [AS 40.25.124](#)

2 AAC 96.350. Contents of determination denying appeal

A determination under 2 AAC [96.345](#) responding to an appeal must be in writing, must specify the specific statute, regulation, or court decision that is the basis for the denial, and must state briefly the reason for the denial. A denial under this section is the final agency decision. A denial must further state that, as provided by [AS 40.25.124](#), the requestor may obtain judicial review of the denial by appealing the denial to the superior court.

History: Eff. 11/6/94, Register 132

Authority: [AS 40.25.110](#); [AS 40.25.120](#); [AS 40.25.123](#); [AS 40.25.124](#); [AS 40.25.125](#)